

STROOCK

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VIA ECF

Hon. Naomi Reice Buchwald, U.S.D.J.
United States District Court
Southern District of New York
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

The request to serve subpoenas before the sufficiency of the complaint has been tested is denied, since plaintiffs have not represented that they have served preservation notices as suggested by the Court in its letter dated August 17, 2021, ECF No. 11, nor have plaintiffs established why preservation notices would not suffice.

SO ORDERED.



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Re: LoanStreet Inc. et al. v. Troia, Case No. 1:21-cv-06166 (NRB)

Dated: New York, New York
October 29, 2021

Dear Judge Buchwald:

We represent Plaintiffs LoanStreet Inc. and Ian Lampl in the above-captioned matter. We write regarding the service of third-party subpoenas to produce documents on (1) Reddit, Inc. (Exhibit 1), (2) Google LLC (Exhibit 2), and (3) Microsoft Corporation (Exhibit 3). Per the Court's August 17, 2021 Order (Dkt. No. 11), Plaintiffs respectfully request authorization to serve these subpoenas. All three subpoenas are narrowly drawn, focused on information relevant to the claims at issue in the litigation, and cover document requests that might be susceptible to loss or modification unless timely produced, as described in more detail below.

1. Document Subpoena to Reddit, Inc. Defendant is alleged to have defamed and disparaged Plaintiffs on Reddit under the user name Real_Obligation_4449, and continues to do so. (See, e.g., Dkt. No. 3 at ¶¶ 42, 45, 49, 81.) Defendant has repeatedly posted to Reddit and has edited his posts. His posts have received attention in the form of views, comments, awards, upvotes, and downvotes.

In the subpoena to Reddit, Plaintiffs ask for documents sufficient to identify all of the relevant statements Defendant has made on Reddit. (See Ex. 1, Request 1.) Plaintiffs also seek to understand how widely Defendant's statements were viewed and shared, which bears on issues such as damages. (*Id.*, Request 2.) In the remaining requests, Plaintiffs request documents to further verify that all of the at-issue statements were indeed made by the Defendant (*see id.*, Requests 3-5), to learn if any such statements were considered for takedown (*see id.*, Request 6), and to receive any correspondence between Reddit and the Defendant. (*See id.*, Requests 7-8.)

The subpoena is thus necessary so that Plaintiffs can learn about all of the posts the Defendant made to Reddit and how those posts were viewed by others and handled by Reddit. The subpoena is also time sensitive for two reasons. First, Reddit posts and comments can be deleted or edited at will and Defendant has altered some of his online posts. Second, because Defendant plans to argue in his forthcoming partial motion to dismiss that his Reddit statements were not defamatory, it is important for Plaintiffs to know about everything he has posted. (*See*

Dkt. No. 12 at 2.) Therefore, Plaintiffs respectfully request authorization to serve the subpoena attached as Exhibit 1 on Reddit.

2. Document Subpoena to Google LLC. Defendant has established a Google Ad campaign to draw increased attention to his posts on Reddit and other websites. The Google Ads themselves are alleged to be defamatory and to improperly use LoanStreet's trademark. (*See, e.g.*, Dkt. No. 3 at ¶¶ 38, 48-55, 61, 81.) They also amplify the damage caused by Defendant's other defamatory posts. And they displace links to LoanStreet's own website in Google search results for "LoanStreet," which not only harms Plaintiffs and confuses consumers, but has also forced Plaintiffs to engage in their own Google Ad campaign to help properly direct searches for "LoanStreet" to LoanStreet's actual website.

In the subpoena to Google, Plaintiffs request documents sufficient to identify all of the relevant Google Ads Defendant has purchased (Ex. 2, Request 1), including what keywords were used for those ads (*id.*, Request 2). Plaintiffs also seek information about the costs of these ads (*id.*, Request 3), how often the ads have been viewed and clicked (*id.*, Request 4-5), and how Defendant's ads have affected the search results for LoanStreet and LoanStreet's own ad campaign. (*Id.*, Requests 6-7.) The remaining requests seek correspondence between Google and the Defendant (*id.*, Request 8) and information about whether Google has considered taking down Defendant's ads. (*Id.*, Request 9.)

Like the Reddit subpoena, the subpoena to Google is also time sensitive. Google Ad campaigns can be suspended at any time and ads can be deleted or edited at will. Moreover, because Defendant plans to argue in his forthcoming partial motion to dismiss that his Google Ad statements were not defamatory, it is important for Plaintiffs to know about all versions of all of his ads. (*See* Dkt. No. 12 at 2.) Because Defendant's use of Google Ads is particularly relevant to the claims in this case, Plaintiffs respectfully request authorization to serve the subpoena attached as Exhibit 2 on Google.

3. Document Subpoena to Microsoft Corporation. The Defendant is currently a Microsoft employee. His defamatory posts to the career website TeamBlind identify him as a Microsoft employee, which confirms he used his Microsoft email account to establish a TeamBlind account—TeamBlind requires the use of a work email address to establish an account. (*See, e.g.*, Dkt. No. 3 at ¶ 44.)

To the extent the Defendant used his Microsoft email account and/or other Microsoft resources to defame or disparage Plaintiffs, Plaintiffs seek the corresponding relevant information that would be in Microsoft's possession, custody, or control. (*See* Ex. 3, Requests 1-3.) The remaining subpoena requests relate to two additional issues. First, early responses and reactions to Defendant's posts, including negative LinkedIn correspondence to LoanStreet, appeared to come from other Microsoft employees. The subpoena requests information regarding whether the Defendant promoted his posts or referenced Plaintiffs within Microsoft. (*See id.*, Request 4.) Second, the Defendant linked his defamatory statements to LoanStreet's LinkedIn profile. LinkedIn, which is owned by Microsoft, has refused to "unlink" LoanStreet's profile and its reasons for doing so have been inconsistent. The last two requests (*see id.*, Requests 5-6) relate to this issue. Because the relevant information sought includes data subject to destruction

policies (e.g., emails and other messages), Plaintiffs respectfully request authorization to serve the subpoena attached as Exhibit 3 on Microsoft.

These subpoenas are all narrowly drawn to relevant information at risk of loss if not timely collected. Preservation notices may be ineffective and/or more burdensome on the third-parties since many of the documents are subject to alteration by the Defendant, and in fact some have been altered by the Defendant.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Christopher M. Gerson

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